

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

TUESDAY

NOVEMBER 18, 2014

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 A.M.

1. [14-14715](#)-A-7 ANTONIO CORTEZ MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
9-24-14 [[5](#)]
ANTONIO CORTEZ/MV
WILLIAM ROMAINE/Atty. for dbt.

Final Ruling

The matter resolved by order issued November 17, 2014, no appearance is necessary.

2. [14-15016](#)-A-7 KRISTEE GARCIA MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
10-13-14 [[5](#)]
KRISTEE GARCIA/MV
ROSALINA NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The matter resolved by order issued November 17, 2014, no appearance is necessary.

3. [13-11829](#)-A-7 TRINIDAD CORTEZ MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH TRINIDAD CORTEZ
10-23-14 [[29](#)]
RH-3
PETER FEAR/MV
TIMOTHY SPRINGER/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

No tentative ruling.

4. [14-14432](#)-A-7 JOSE GARCIA OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
10-14-14 [[13](#)]
PFT-1
THOMAS GILLIS/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend

Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at *2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at the first date set for the meeting of creditors. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the continued date of the creditor's meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will be extended so that they run from the next continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

CIVIL MINUTE ORDER

The court will issue a minute order that conforms substantially to the following form:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for December 5, 2014 at 8:30 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a

motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

5. [14-12743](#)-A-7 JOSE VASQUEZ
JES-1
JAMES SALVEN/MV
AGREEMENT

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT

10-17-14 [[20](#)]

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

Based on the motion and supporting papers, the court finds that the compromise is fair and equitable considering the relevant *A & C Properties* factors. The compromise will be approved.

6. [14-14443](#)-A-7 HARJINDER MANDAIR
PFT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
10-14-14 [[21](#)]

RATTAN DEV DHALIWAL/Atty. for dbt.

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at *2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at the first date set for the meeting of creditors. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the continued date of the creditor's meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will be extended so that they run from the next continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

CIVIL MINUTE ORDER

The court will issue a minute order that conforms substantially to the following form:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for December 5, 2014, at 8:30 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

7. [11-60663](#)-A-7 HUMMER TRANSPORTATION, MOTION FOR COMPENSATION FOR
JTW-2 INC. JANZEN, TAMBERI & WONG,
JANZEN, TAMBERI & WONG/MV ACCOUNTANT(S).
10-24-14 [[315](#)]

Tentative Ruling

Application: Final Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis as to the amounts requested.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The application of Janzen, Tamberi & Wong, an Accountancy Corporation, for allowance of final compensation and reimbursement of expenses has been presented to the court. Having considered the well-pleaded facts of the application, and having entered the default of respondent for failure to appear, timely oppose or otherwise defend in the matter,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$3416.00 and reimbursement of expenses in the amount of \$0.00.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

8. [13-11665](#)-A-7 DENNIS MCGOWAN
PLF-6

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR LAW GROUP,
P.C. FOR PETER L. FEAR,
TRUSTEE'S ATTORNEY(S).
10-27-14 [[62](#)]

PETER BUNTING/Atty. for dbt.

No tentative ruling.

9. [10-61970](#)-A-7 BRIAN ENNIS
RH-9
JAMES SALVEN/MV
10-21-14 [[316](#)]
RILEY WALTER/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

MOTION TO EMPLOY PEARSON REALTY
AS BROKER(S)

Tentative Ruling

Application: Approval of Employment and Approval of Compensation

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Approved in part, denied in part without prejudice

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The court may approve employment of professional persons who "do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); see also *id.* § 101(14) (defining "disinterested person"). From the factual information provided in the motion and supporting papers, the court will approve the application in part as to the employment of the real estate broker identified in the application.

The application, however, seeks court approval of the terms of compensation of the broker under § 328(a). The compensation

arrangement for which approval is requested is not included in the notice of hearing. Accordingly, the court will deny without prejudice the request for approval of the compensation arrangement and will decide whether to approve the broker's compensation at such time as an application for compensation is filed in the future.

10. [12-13170](#)-A-7 AUGUSTINE PENA
THA-10
TRUDI MANFREDO/MV

MOTION FOR AN ORDER FIXING
DEADLINES FOR FILING OF
REQUESTS FOR PAYMENT OF
ADMINISTRATIVE CLAIMS, FEES,
AND EXPENSES AND DESIGNATING
THE FORM AND MANNER OF NOTICE
THEREOF
11-4-14 [[596](#)]

FRANCISCO ALDANA/Atty. for dbt.
THOMAS ARMSTRONG/Atty. for mv.

No tentative ruling.

11. [14-13576](#)-A-7 BOBBY PERKINS
RHT-2
ROBERT HAWKINS/MV
DAVID JENKINS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

MOTION TO SELL
10-17-14 [[30](#)]

Tentative Ruling

Motion: Sell Property

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by moving party

Property: Inventory, fixtures, and equipment located at the premises of the debtor's former pizza shop

Buyer: Piccolo's Pizza, Inc.

Sale Price: \$5,000

Sale Type: Private sale subject to overbid opportunity

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

9:15 a.m.

1. [13-15928](#)-A-7 EDWARD/DENIECE MCARTHUR STATUS CONFERENCE RE: COMPLAINT
[14-1113](#) 9-18-14 [[1](#)]
SALVEN V. AUTEN ET AL
TRUDI MANFREDO/Atty. for pl.

Final Ruling

The status conference is continued to January 14, 2015, at 10:00 a.m.

2. [08-10861](#)-A-7 JAMES/DAISY CORBETT CONTINUED CHAPTER 7 TRUSTEE'S
JES-3 FINAL ACCOUNT AND DISTRIBUTION
REPORT, OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
10-23-12 [[92](#)]

MARK ZIMMERMAN/Atty. for dbt.
JAMES SALVEN/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

3. [08-10861](#)-A-7 JAMES/DAISY CORBETT CONTINUED STATUS CONFERENCE RE:
[14-1089](#) COMPLAINT
CALIFORNIA CORRECTIONAL PEACE
OFFICERS ASSOCIATION V. 8-25-14 [[1](#)]
ED HAYS/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

10:00 a.m.

1. [14-15057](#)-A-7 AGGIE BOUSKOS AMENDED MOTION FOR RELIEF FROM
DRJ-1 AUTOMATIC STAY
GSF PROPERTIES INC./MV 11-2-14 [[23](#)]
DAVID JENKINS/Atty. for mv.

Final Ruling

Motion: Stay Relief

Disposition: Denied as moot

Order: Civil minute order

The moving party seeks relief from the automatic stay. The dismissal of this case has terminated the automatic stay, § 362(c)(2)(B), so the court is unable to grant effective relief. The motion will be denied as moot.

2. [14-12972](#)-A-7 MARK/DARLENE JONES MOTION FOR RELIEF FROM
VVF-1 AUTOMATIC STAY
AMERICAN HONDA FINANCE 10-30-14 [[62](#)]
CORPORATION/MV
PETER FEAR/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.
DISCHARGED

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted in part, denied in part as moot

Order: Prepared by moving party

Subject: 2010 Acura MDX

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

AS TO DEBTOR

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion is moot as to the debtor.

AS TO ESTATE

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured

creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and 2.5 postpetition payments are past due (see stay relief summary sheet, item no. 8(b)).

The debt secured by the vehicle is \$20,988.13 and the value of the property is only \$21,450. The equity cushion is approximately \$461.87. The moving party contends that its interest in the collateral is not protected by an adequate equity cushion, and that the fair market value of the collateral is declining and payments are not being made to the movant sufficient to protect the movant against such decline.

The moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default. See 11 U.S.C. § 1326(a)(1)(C) (requiring adequate protection payments to commence not later than 30 days after the petition as to any creditor secured by personal property).

Therefore, cause exists to grant relief under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

3. [14-14275](#)-A-7 JOSE/PATRICIA FLORES MOTION FOR RELIEF FROM
RWR-1 AUTOMATIC STAY
WELLS FARGO BANK, NATIONAL 10-16-14 [[14](#)]
ASSOCIATION/MV
RICHARD BAMBL/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Subject: 300 South J Street, Tulare, California

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada*,

Inc., 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

4. [14-14376](#)-A-7 JOE PEREZ CONTINUED MOTION FOR RELIEF
KDG-1 FROM AUTOMATIC STAY
MONICA TRIANO/MV 10-8-14 [[19](#)]
ASHTON DUNN/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

10:30 a.m.

1. [14-15019](#)-A-7 LEEANN/ANTHONY GRIEGO PRO SE REAFFIRMATION AGREEMENT
WITH SANTANDER CONSUMER USA
INC.
10-29-14 [[19](#)]

No tentative ruling.

2. [14-14285](#)-A-7 ISAAC ARMENDARIZ AND VERA PRO SE REAFFIRMATION AGREEMENT
CORDOVA WITH FRESNO COUNTY FEDERAL
CREDIT UNION
10-27-14 [[15](#)]

RICK BANKS/Atty. for dbt.

No tentative ruling.

3. [14-14285](#)-A-7 ISAAC ARMENDARIZ AND VERA PRO SE REAFFIRMATION AGREEMENT
CORDOVA WITH FIRST CALIFORNIA FEDERAL
CREDIT UNION
10-29-14 [[17](#)]

RICK BANKS/Atty. for dbt.

No tentative ruling.

1:30 p.m.

1. [12-17310](#)-A-11 JOHN/GRACE VISSER
RAC-46
JOHN VISSER/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH GOLDEN STATE
FEED AND GRAIN
10-27-14 [[1030](#)]

RONALD CLIFFORD/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by moving party and the stipulation attached to the motion as Exhibit 1 shall be attached to the proposed order

Parties to Compromise: John L. Visser and Grace A. Visser (the "Vissers"), who are reorganized chapter 11 debtors pursuant to a confirmed chapter 11 plan, and Golden State Feed and Grain ("Golden State")

Dispute Compromised: The validity and amount of Golden State's unsecured claim given erroneous scheduling of such claim in the debtors' bankruptcy and assertion that such claim is owed by an entity other than the Vissers (an entity that is owned by the Vissers)

Summary of Material Terms: The parties agree and stipulate that Golden State is not and never was a creditor in the Vissers' Bankruptcy Case and was not entitled to receive any payments under the Plan, and the stipulation is binding on the parties and their assigns and successors in interest

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

Based on the motion and supporting papers, the court finds that the compromise is fair and equitable considering the relevant A & C *Properties* factors. The compromise will be approved.

2. [13-17136](#)-A-11 BHAVIKA'S PROPERTIES, CONTINUED STATUS CONFERENCE RE:
LLC VOLUNTARY PETITION
11-1-13 [[1](#)]

ELAINE NGUYEN/Atty. for dbt.

No tentative ruling.

3. [14-14241](#)-A-11 ARTHUR FONTAINE MOTION TO AUTHORIZE USE OF
DMG-6 PROPERTY AND/OR MOTION TO
ARTHUR FONTAINE/MV ASSUME LEASE OR EXECUTORY
CONTRACT
10-29-14 [[74](#)]

D. GARDNER/Atty. for dbt.

Tentative Ruling

Motion: Authorizing Use of Property and Authorizing Assumption of Executory Contracts

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Denied without prejudice

Order: Civil minute order

"A proceeding to assume, reject, or assign an executory contract or unexpired lease, other than as part of a plan, is governed by Rule 9014." Fed. R. Bank. P. 6006(a). Because a motion to assume, reject, or assign an executory contract or unexpired lease initiates a contested matter, it must be served upon the respondent in the manner provided by Rule 7004. See Fed. R. Bankr. P. 9014(b).

Here, the proof of service does not provide sufficient information to know whether the motion to assume, assign, or reject the executory contracts identified has been served on an agent of respondents, the other parties to such contracts, in accordance with Rule 7004. For example, the other party to the construction contract attached as an exhibit appears to be Dianda Construction, LLC. No evidence is offered in the proof of service that an agent or officer authorized to accept service has received the motion by first class mail. See Fed. R. Bankr. P. 7004(b)(3). Further, it is unclear whether mailing of the motion to Mark B. Jackson, Esq. constitutes sufficient service under Rule 7004(b)(6).

Any proof of service for a subsequent motion to assume an executory contract with Douglas County, Nevada, shall contain either one of the following affirmative statements: (i) "Counsel for the movant affirms that service has been made in a manner that complies with Rule 7004(b)(6) of the Federal Rules of Bankruptcy Procedure"; or (ii) "Counsel for the movant affirms that service has been made in a manner that complies with Rule 4(j)(2) of the Federal Rules of Civil Procedure."

In addition, the notice of the motion contains insufficient information to place creditors on notice of the relief requested, but only if the notice is the only document that was sent to the creditor matrix. The court interprets the proof as stating that the motion and all supporting documents were sent to all creditors, so the insufficient content of the notice may have been harmless.

Lastly, the motion improperly joins multiple requests for relief that are sufficiently unrelated to join together. See Fed. R. Bankr. P. 9014(c); see also Fed. R. Bankr. P. 7018, 7020. No joinder request has been made in any event. See Fed. R. Bankr. P. 7021, 9014(c).

4. [13-17744](#)-A-11 SREP V, LLC

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
12-6-13 [[1](#)]

PETER FEAR/Atty. for dbt.

No tentative ruling.

5. [14-10851](#)-A-11 JOHN/BETTY VAN DYK
WW-15
JOHN VAN DYK/MV
PROPERTY

MOTION FOR AUTHORITY TO ASSUME
OPTION TO PURCHASE REAL

11-12-14 [[273](#)]

RILEY WALTER/Atty. for dbt.
OST 11/12/14

No tentative ruling.

6. [14-10851](#)-A-11 JOHN/BETTY VAN DYK
WW-18
JOHN VAN DYK/MV

MOTION TO SELL
11-12-14 [[279](#)]

RILEY WALTER/Atty. for dbt.
OST 11/12/14

No tentative ruling.